

[This was filed late Fri., 2-9-07] **COPY**

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

STATE OF IOWA, ex rel.
THOMAS J. MILLER,
ATTORNEY GENERAL OF IOWA,
and IOWA DEPARTMENT OF
TRANSPORTATION,

Plaintiffs,

v.

BRUCE RUBEN DUQUE, TINA R. DUQUE
(a/k/a Tina R. Heth), FRANCISCO J. DUQUE, JR.,
ESPERANZA DUQUE and JONATHAN WILLE,
individually and d/b/a AARDVARK AUTO
SERVICE & SALES, STATE STREET CAR
COMPANY, THE MOTORHAUS, AUTO KINGS,
UBA AUTO REPAIR and/or URA AUTO REPAIR
and THE CAR BOYS,

Defendants.

EQUITY NO. 107838

**AGREED ORDER
MODIFYING
TEMPORARY
INJUNCTION**

On this 9th day of February, 2007, the Court, having been presented with the parties' joint request to modify the Order Granting Temporary Injunction, determines that the Order Granting Temporary Injunction should be modified as set forth herein:

IT IS HEREBY ORDERED pursuant to Iowa R. Civ. P. 1.1501, *et seq.*, the Iowa Consumer Fraud Act, Iowa Code § 714.16, the Iowa Motor Vehicle Dealer's Code, Iowa Code § 322.11, and the Iowa Consumer Credit Code, Chapter 537, that Defendants, and each of them, and (as applicable) their directors, officers, principals, partners, employees, agents, servants, representatives, subsidiaries, affiliates, successors, assigns, merged or acquired predecessors, parent or controlling entities, and all other persons, corporation and other entities acting in concert or participating with the Defendants who have actual or constructive notice of the Court's injunction are restrained and enjoined during the

pendency of this litigation from:

- a. Engaging in the deceptive, misleading and unfair practices alleged in the Petition and from otherwise violating the Iowa Consumer Fraud Act;
- b. Engaging in practices or acts in violation of Iowa Code Chapter 322;
- c. Engaging in practices or acts in violation of Iowa Code Chapter 537;
and
- d. Owning or operating a used motor vehicle dealership in the State of Iowa and/or conducting business in the State of Iowa as a used motor vehicle dealership under the names Aardvark Auto, State Street Car Company, The Motorhaus, UBA Auto Repair and/or URA Auto Repair, Auto Kings, The Car Boys, or any other names.

IT IS FURTHER ORDERED that Defendants and the other enjoined persons and entities are further enjoined from engaging in the acts and practices set forth in the lettered paragraphs below, to the extent the conduct in question occurs in the State of Iowa (wholly or in part) or is directed to an Iowa resident:

- a. Engaging, personally or through a representative, in the sale at retail of used motor vehicles, as defined by Iowa Code § 322.2(7).
- b. Holding or applying, personally or through a representative, for any motor vehicle dealer's license or any other type of license, permit or registration required for or associated with the retail sale, wholesale, purchase, lease, repair, rent, titling, financing, warranty, recycling, salvaging, repossession, transportation, hauling, carrying or towing

of a motor vehicle;

- c. Attending any auto auction, personally or through any representative;
- d. Purchasing, personally or through any representative, any vehicles sold through or by an auto auction or auction representative;
- e. Purchasing or selling, personally or through any representative, motor vehicles, other than for personal use. "Personal use" means up to two vehicles per year, that are titled in one of the Defendants' name for at least 120 days, and that are used by one of the Defendants or the Defendants' immediate family for personal use;
- f. Acting in any capacity in the process of selling, buying, leasing, repairing, renting, titling, financing, warranting, recycling, salvaging, repossessing, wholesaling, transporting, hauling, carrying or towing used motor vehicles other than those that are used by Defendants for personal use, including but not limited to being employed as an agent, employee, contractor or consultant by any person or entity who is engaged in the business of selling, buying, leasing, repairing, renting, titling, financing, warranting, recycling, salvaging, repossessing, wholesaling, transporting, hauling, carrying or towing motor vehicles;
or
- g. Being engaged or employed, full-time or part-time, or in any capacity by any person or entity who is engaged in the business of financing or otherwise extending credit to a person or entity who is engaged in the business of selling, buying, leasing, repairing, renting, titling,

financing, warranting, recycling, salvaging, repossessing, wholesaling, transporting, hauling, carrying or towing motor vehicles.

Notwithstanding the foregoing:

- a. Defendants can continue to operate Car Boys, Illinois Dealers' License # 3467, within the State of Illinois in compliance with Illinois law. However, Defendants cannot advertise, promote, display, offer for sale or sell used cars within or into the State of Iowa or to an Iowa resident.
- b. Notwithstanding the preceding paragraph, Defendant Car Boys, which is a licensed Illinois dealer, is not prohibited from:
 - 1) Selling cars to Iowa consumers at its Illinois location. In addition, Defendant Car Boys is not prohibited from providing financing for those transactions. However, Defendant Car Boys cannot engage in any collection or repossession activities within the State of Iowa.
 - 2) Placing advertisements which are distributed into the State of Iowa, including newspaper advertisements and/or telephone book listings, provided that any such advertisements contain the statement "Not an Iowa licensed motor vehicle dealer" in a conspicuous location and in bold 14-point type, also clearly disclose that the dealer's lot is located outside the State of Iowa and comply with applicable Iowa law. Defendants are prohibited from brokering or otherwise facilitating Car Boys'

sales to Iowa consumers (i.e., Defendant can not provide shuttle or ride service from Iowa to the Moline location).

- c. Defendants can remove the vehicles which Defendants claim are owned by Car Boys and which are identified on Exhibit A hereto from the State of Iowa and transport them to the State of Illinois.
- d. Defendants shall continue to accept payments on all outstanding contract sales made by Aardvark Auto Service & Sales and Motorhaus, which are identified on Exhibit B hereto, at 802 W. 2nd Street, Davenport, Iowa during the hours of 10:00 a.m. to 6:00 p.m. on Mondays and Fridays and 10:00 a.m. to 5:00 p.m. on Saturdays. Defendants shall also establish and maintain a new post office box and shall accept payments by mail addressed to the new post office box on all outstanding contract sales made by Aardvark and Motorhaus. Defendants cannot require the Aardvark or Motorhaus customers identified on Exhibit B hereto to make payments at a location outside the State of Iowa and Defendants cannot accept at 802 W. 2nd Street, Davenport, Iowa payments on any outstanding contract sales made by Car Boys. In addition, Defendants and the other enjoined persons and entities cannot engage in any collection efforts or repossession activities within the State of Iowa or direct any collection efforts or repossession activities at an Iowa resident, except such collection activities as have been specifically provided for in this paragraph. Defendants shall be permitted to mail to the consumers

listed in Exhibit B the following information: (1) advice as to when payments may be made at 802 W. 2nd Street; (2) advice as to when warranty repair work may be scheduled at 802 W. 2nd Street; (3) advice as to where payments may be mailed; (4) advice that payments may be accepted at the customer's option at the Car Boys location in Illinois; (5) accountings on installment purchases; (6) notices of reformation of sale contracts, truth in lending states, or other disclosures; and (7) where appropriate, Notices of Right to Cure and Notices of Right to Redeem. Defendants are permitted to return calls to consumers listed on Exhibit B who have inquired to advise them that payments may be made at 802 W. 2nd Street, Davenport, Iowa or by mail. Defendants shall be allowed to make one call to a consumer who has missed a payment. Defendants are allowed one call per payment missed. If Defendants are unable to reach a consumer, Defendants may leave a message or attempt another phone call at a later time. Defendants may also follow up the phone call with one letter reminding the consumer of the payment due. During all communications with consumers, Defendants must follow the Iowa Debt Collection Practices Act. No further communications or contacts with the consumers identified on Exhibit B may be initiated by Defendants at this time.

- e. Defendants shall make warranty repairs on all outstanding Aardvark and Motorhaus warranties, identified on Exhibit B hereto, at 802 W.

2nd Street, Davenport, Iowa within a reasonable period of time following a request by an Aardvark or Motorhaus customer identified on Exhibit B hereto. Defendants may make these repairs during the hours they are open to accept payment, Mondays and Fridays and 10:00 a.m. to 5:00 p.m. on Saturdays. Defendants cannot require the Aardvark or Motorhaus customers identified on Exhibit B hereto to go outside of the State of Iowa to obtain warranty repairs, Defendants cannot make any non-warranty repairs at 802 W. 2nd Street, Davenport, Iowa, and Defendants cannot make warranty repairs for Car Boys' customers at 802 W. 2nd Street, Davenport, Iowa. All warranty repair services provided at 802 W. 2nd Street, Davenport, Iowa must be completed on or before September 15, 2007. After that time, no repair services will be provided by Defendants or the other enjoined persons and entities at 802 W. 2nd Street, Davenport, Iowa or any other location in the State of Iowa.

- 1) Before commencing a warranty repair service, Defendants shall provide to the customer a document detailing the work to be done and the estimated cost. Customers must acknowledge receipt of the document through signature. If Defendants discover, once commencing the repair work, that the cost of the warranty repair work will exceed the estimated cost disclosed to the customer, Defendants shall cease work until notifying the customer and until the customer signs a new

disclosure detailing the increased costs and additional work.

- 2) Defendants shall provide to all warranty repair service customers a disclosure stating Defendants' rights under the Artisan's Lien statute, including but not limited to Defendants' right to keep the vehicle until payment is received, Defendants' duty to notify the customer before the enforcement of the artisan's lien, and Defendants' duty to sell the vehicle in a commercially reasonable manner. All customers must acknowledge receipt of the document through signature.
- 3) Defendants shall not demand any payment prior to commencing work on the vehicle.
- 4) If the customer does not pay upon completion of the warranty repair work and Defendants choose to exercise their artisan's lien rights and keep the vehicle, then Defendants shall immediately notify the customers in writing of Defendants' intention to sell the vehicle in satisfaction of the lien, the date Defendants intend to sell the vehicle, and the customer's right to redeem the vehicle. Defendants shall wait two weeks after providing a customer with written notice before selling the vehicle in a commercially reasonable manner.
- 5) If the customer is unable to pay for the warranty repair work and Defendants hold the vehicle pursuant to their artisan's lien, Defendants shall not charge the customers a storage fee for

holding the vehicle. Defendants shall also promptly return any personal belongings left in the vehicle. Defendants shall not charge a storage fee for holding personal belongings.

- 6) Once the artisan's lien has been satisfied, any excess money from selling a vehicle in a commercially reasonable manner shall go the customer.
 - 7) Defendants are permitted to accept installment payments for warranty work in accordance with Iowa law. However, Defendants shall not engage in any repossession activities within the State of Iowa arising from the payment plan for warranty work.
 - 8) In conducting all warranty repair service Defendants shall obey all applicable Iowa law.
- f. Defendants shall, within ten (10) business days of the entry of this Order, transfer to any Aardvark or Motorhaus customer identified on Exhibit C ^{*} hereto the title to the vehicle identified on Exhibit C hereto as having been purchased by that customer.
- g. Defendants shall release the lien on any vehicle identified on Exhibit D hereto within ten (10) days of receipt of payment in full on the underlying debt.

IT IS FURTHER ORDERED that:

- a. Within twenty-four hours of the entry of this Order, Defendants shall remove from display at 802 W. 2nd Street, Davenport, Iowa and any other location within

the State of Iowa the Aardvark Auto Service & Sales sign and any other signs advertising that Defendants are engaged in the business of selling or repairing used motor vehicles. In addition, within twenty-four hours of the entry of this Order, Defendants shall take action to ensure that no access is permitted to the web-site domain www.aardvarkauto.com, and that the web-site domain is not used to link to any other web-site associated in any way with the sale of used motor vehicles, including but not limited to the web-site domain www.redbaronmotors.com.

b. Defendants shall maintain such records as are necessary to demonstrate compliance with the terms of this Agreed Order Modifying Temporary Injunction and retain such records until the litigation is concluded and any applicable appeal period has expired. Defendants shall respond promptly, on-demand, to reasonable requests from Plaintiffs for information and documents demonstrating compliance with the terms of this Agreed Order Modifying Temporary Injunction.

c. Within 14 days Defendants shall provide to Plaintiffs copies of all documents concerning each transaction listed on Exhibit B including, but not limited to: purchase agreements, retail installment contracts, all documents provided to the consumer, all documents received from the consumer, all documents signed by the consumer, all title documents (front and back), all signed power of attorney forms, all worksheets, the outside cover of the consumer's file or deal jacket and the consumer's payment history on the vehicle

d. This Agreed Order Modifying Temporary Injunction shall be effective from the date filed.

IT IS SO ORDERED.

Dated: _____

District Court Judge

SUBMITTED BY:

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ATTORNEY FOR DEFENDANTS

[* Exhibits A, B, C are not posted on AG's web site; they contain substantial private information of consumers. ~~if~~ The exhibits are being filed under seal.]